



INTERIOR BOARD OF INDIAN APPEALS

Kay Jones v. Billings Area Director, Bureau of Indian Affairs

36 IBIA 104 (04/02/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

KAY JONES,	:	Order Affirming Decision
Appellant	:	as Modified
	:	
v.	:	
	:	Docket No. IBIA 00-15-A
BILLINGS AREA DIRECTOR, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	April 2, 2001

This is an appeal from a September 22, 1999, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), 1/ concerning Lease 1069-99-03 for Fort Belknap Allotment 10-C. For the reasons discussed below, the Board affirms the Area Director's decision as modified herein.

At all times relevant to this appeal, ownership of Allotment 10-C was shared equally (1/5 each) by Kay Jones (Appellant), Jubal Jones, Alfreda Horseman, Lorraine Brockie, and the Estate of Mary C. Jones. 2/

In 1994, Allotment 10-C was leased to co-owner Mary C. Jones for a term ending on December 31, 1998. In March 1998, the Fort Belknap Agency, BIA, mailed 90-day notices to the owners of Allotment 10-C, informing them of their right to negotiate a lease with a lessee of their choice for the new lease term. 3/ In May 1998, co-owner Lorraine Brockie expressed interest in leasing the allotment. She obtained the consent of one other owner, Alfreda Horseman, for a two-year lease.

BIA included Allotment 10-C on a November 12, 1998, lease advertisement but deleted it at the December 18, 1998, bid opening. Instead, on December 18, 1998, BIA approved

1/ The BIA position formerly titled Billings Area Director is now titled Rocky Mountain Regional Director.

2/ Mary C. Jones died in February 1998. As of the date Lease 1069-99-03 was approved, her estate had not been probated.

3/ Appellant and Jubal Jones state that they did not receive their 90-day notices.

Lease 1069-99-03 with Lorraine Brockie as lessee. 4/ The lease states that it is for a five-year term. It further states that it was approved under authority of 25 C.F.R. §§ 162.2(a)(3) and (4) (1998). 5/

Appellant, Jubal Jones, and three other individuals appealed the lease approval to the Area Director. 6/ The Area Director affirmed the approval on September 22, 1999. Appellant then appealed to the Board.

Appellant seeks to have Brockie's lease declared invalid in its entirety. She also argues that, even if the lease is valid, it should be limited to two years. The Board agrees that, regardless of whether the lease should have approved at all, it should not have been approved for more than two years.

Alfreda Horseman's consent was given for a two-year lease. The Superintendent appears to have relied on her consent in approving the lease, and there is no indication that he had any specific intent to override the term limitation it included. 7/

Further, the Superintendent's authority to grant a lease on behalf of the estate of Mary C. Jones was, under the circumstances here, limited to a lease with a term of two years or less. 25 C.F.R. § 162.8(e) (1998); 8/ Lewis v. Acting Anadarko Area Director, 33 IBIA 190, 192

4/ The signature of the individual who approved the lease is not legible, and no title is given. For purposes of this decision, the Board presumes that the individual was either the Superintendent or an Acting Superintendent.

5/ 25 C.F.R. § 162.2(a) (1998) provided:

"The Secretary may grant leases on individually owned land on behalf of:

* * * * *

"(3) The undetermined heirs of a decedent's estate;

"(4) The heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees."

6/ All five stated that they were presumptive heirs of Mary C. Jones. Of course, although they did not so state, Appellant and Jubal Jones were also landowners in their own right.

7/ The Agency's preparation of the lease for a five-year term appears to have been inadvertent. See n.9 below.

8/ 25 C.F.R. § 162.8(e) (1998) provided:

"Leases granted by the Secretary pursuant to § 162.2(a)(3) shall be for a term of not to exceed two years except as otherwise provided in § 162.6(b)."

25 C.F.R. § 162.6(b) (1998) is not applicable here.

(1999). Accordingly, Brockie's lease should have been approved for a period of two years only. 9/

Brockie's lease is now in its third year. She has presumably paid her rent for this year, as it was due on January 1, 2001. Unless some agreement can be reached among the landowners for terminating the lease before the end of 2001, Brockie shall be allowed to remain on the lease through December 31, 2001, at which time the lease will terminate. 10/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's September 22, 1999, decision is affirmed as modified herein. 11/

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

9/ It appears from the record that Agency staff realized the error in the lease term after the lease approval was appealed to the Area Director. See Report of Circumstances - Kay Jones Appeal on Lorraine Brockie Lease No. 1069-99-03 at 2: "This lease should have been for a two-year term, because of the estate involved, but typed for a 5-year term, should be modified to change the term to two years."

10/ The Area Director's decision requires the Superintendent to investigate Appellant's allegation that Brockie has cut and removed hay from Allotment 10-C despite the lack of any provision in her lease that authorizes her to do so. There are also indications in the record that the previous lessee, the now-deceased Mary C. Jones, entered into an unapproved sublease and that her sublessee also cut and removed hay from the allotment.

The Superintendent shall investigate these matters and, with the assistance of the Solicitor's Office, determine whether trespasses have occurred for which compensation to the landowners should be sought.

11/ Appellant's motion to strike Brockie's answer brief is denied.